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IN THE

Supreme Court of the United States

OCTOBER TERM—~~1965~~ 1966

No. [redacted] 71

IN THE MATTER

of

LANDON ZUCKERMAN and SAM HABER,

Petitioners,

against

SAMUEL GREASON,

Respondent.

TO THE HONORABLES, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SAMUEL GREASON,
Respondent,
Chief Counsel,
Judicial Inquiry on Professional Conduct,
821 Franklin Avenue,
Garden City, New York 11530.

INDEX

	PAGE
Index to Appendix	ii
Opinion Below	1
Proceedings Below	2
Statutes Involved	5
Statement	7
ARGUMENT	17
Conclusion	20

CASES CITED

Anonymous Nos. 6 & 7 v. *Baker*, 360 U. S. 287; 79 S. Ct. 1157 (1959) 17, 18

Cohen v. *Hurley*, 366 U. S. 117, 81 S. Ct. 954 (1961) (Rehearing denied, 374 U. S. 857, 83 S. Ct. 1860) 19

STATUTES, RULES AND CANON OF ETHICS CITED

Canon No. 9, Canons of Professional Ethics, Appendix to New York Judiciary Law 5

Judiciary Law, State of New York, Section 90, subdivisions 2 and 7 6

Special Rules of the Appellate Division, Second Department, adopted July 1, 1960, relating to conduct of attorneys—Rule 7 5

INDEX TO APPENDIX

	PAGE
Order of Disbarment of Petitioner, Landon Zuckerman, and Suspension of Petitioner, Sam Haber, dated March 3, 1965	1a
Opinion on Order of Disbarment and Suspension	6a
Notice of Appeal of Petitioner, Landon Zuckerman, to Court of Appeals	9a
Order on Motion by Petitioner, Landon Zuckerman, for Reargument or for Leave to Appeal to Court of Appeals, dated April 15, 1965	10a
Order on Motion by Petitioner, Sam Haber, for Reargument or for Leave to Appeal to the Court of Appeals and for a Stay	11a
Notice of Appeal by Petitioner, Landon Zuckerman, to Court of Appeals, dated April 28, 1965	12a
Notice of Appeal to Court of Appeals by Petitioner, Sam Haber, dated March 29, 1965	13a
Order of Court of Appeals Dismissing Appeal of Petitioner, Sam Haber	14a
Order of Court of Appeals Dismissing Appeal of Petitioner, Landon Zuckerman	15a

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Opinion Below

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Department, accompanied the order of the Appellate Division (A. 6a) reported in 23 A. D. 2d 825 (1965), 259 N.Y.S. 2d 963.

Proceedings Below

Petitioners, Zuckerman and Haber, were respondents in a disciplinary proceeding brought by Samuel Greason, Chief Counsel for the Judicial Inquiry on Professional Conduct for Nassau County, New York, on the order of the Appellate Division of the Supreme Court of the State of New York, Second Department. Separate, but identical, petitions were filed with the Appellate Division, Second Department.

Thereafter, on the Petitions, Answers and Bills of Particulars, the Appellate Division, Second Department, referred the matter to a Referee on September 25, 1961, for hearing, report and recommendation.

Hearings were held before the Referee on fifteen days between June 11, 1962 and November 15, 1963. Testimony totalled 1,884 pages, with 161 exhibits. Forty-eight witnesses testified.

The Referee's Report to the Appellate Division, Second Department, filed June 6, 1964, sustained Specifications 5A, 5B, 5F and 5H as to Zuckerman, and Specifications 5B, 5F and 5H as to Haber. The Appellate Division, Second Department, on March 3, 1965, unanimously confirmed the Referee's Report and disbarred Zuckerman and suspended Haber for five years (23 A. D. 2d 825; 259 N.Y.S. 2d 963).

Motions by Zuckerman and Haber to modify the Order were denied on March 23, 1965.

Thereafter, petitioners, Zuckerman and Haber, separately moved in the Appellate Division for reargument or leave to appeal to the Court of Appeals. The motions were denied on April 15, 1965, and thereafter, petitioners, Zuckerman and Haber, separately moved in the Court of Appeals for leave to appeal. These motions were denied (16 N. Y. 2d 482).

Petitioners, Zuckerman and Haber, separately moved in the Court of Appeals for leave to appeal on the original record in the Appellate Division, Second Department, and respondent cross-moved to dismiss the appeals on the ground that no substantial constitutional question was involved. The Court of Appeals, on October 21, 1965, denied petitioners' motions and granted the cross-motion to dismiss (16 N. Y. 2d 992).

The petitioners have submitted the following questions:

1. Can the same court investigate, determine to prosecute, prefer the charges against, prosecute and determine the guilt or innocence of an attorney and then discipline such attorney without being held to have denied due process to such attorney within the contemplation of the Constitution of the United States?

2. To what extent may an attorney be denied the simplest constitutional rights available to all others? In the absence of a statutory provision therefor, and contrary to the rights of all other citizens, may an attorney be disciplined for refusing to turn over possession of his personal records to a disciplinary investigation, and is discipline for such refusal a denial of due process and of the equal protection of the laws?

3. Is the simple assertion of the most basic constitutional right unavailable to an attorney? When, in response to a demand therefor, an attorney makes a full disclosure of his files and records to a disciplinary investigation, but, as all other citizens may do, asserts his constitutional privilege in aid of his refusal to turn over physical possession of all of his records, turnover of which was demanded without any showing of the relevancy of such turnover to the proceeding, may such attorney be disciplined for failing to "cooperate" in the absence of any statutory requirement

for such turnover, and is such discipline a denial of due process and the equal protection of the laws?

4. When, long prior to the adoption by two out of the four departments of the Appellate Division in New York of a special rule of conduct relating to the taking of an adversary *party* statement at a time when such adversary is represented by counsel, an independent third-party licensed investigator, without authorization from the attorney, takes a statement from a witness in the course of a preliminary investigation to determine the existence of a claim, may the attorney be disciplined by an *ex post facto* application and amplification of the rule, and is such discipline a denial of due process and the equal protection of the laws?

5. May a local court adopt a special rule of conduct applicable only to attorneys practicing within its local geographic limits the effect of which is to unfairly discriminate against such attorneys as compared to other attorneys practicing within the state and which discrimination also affects clients' rights to proper representation?

6. Where two separate disciplinary proceedings against two attorneys are consolidated for the purposes of trial and the trier of the facts fails to make a finding of wrongdoing as against either attorney (except, in the case of one of them, the refusal to turn over physical possession of records) and, with regard to the other charges, makes his findings in such manner as to make it impossible to tell what facts were found and as against which attorney, but concludes the guilt of each attorney, is the failure to make separate findings as to each attorney a denial of due process?

Statutes Involved

United States Constitution, Article I, Section 10:

"No State shall * * * pass any * * * ex post facto Law, * * *"

United States Constitution, Fourteenth Amendment:

"Section 1. * * * nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of the State of New York, Article I, Section 6 (as pertinent):

"No person shall be deprived of life, liberty or property without due process of law."

Special Rules of the Appellate Division, Second Department, adopted July 1, 1960, relating to conduct of attorneys:

"Rule 7

Prohibition of communication with adverse party.

No attorney shall communicate directly or indirectly upon the subject of any pending claim or action with an adverse party plaintiff or defendant known to him to be represented by attorney without the latter's knowledge and consent, nor shall he permit any claim agent or other representative of his client to interview an adverse party plaintiff or defendant or obtain any statement from him, or make any settlement with him without the knowledge and consent of the latter's attorney."

Canons of Professional Ethics, Canon 9 (Appendix to New York Judiciary Law):

"9. Negotiations With Opposite Party

A lawyer should not in any way communicate upon the subject of controversy with a party represented by

counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law."

Judiciary Law, State of New York, Section 90, subdivisions 2 and 7:

"2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct, malpractice, fraud, deceit, crime or misdemeanor, or any conduct prejudicial to the administration of justice; and the appellate division of the supreme court is hereby authorized to revoke such admission for any misrepresentation or suppression of any information in connection with the application for admission to practice. * * *"

"7. It shall be the duty of any district attorney within a department, when so designated by the presiding justice of the appellate division of the supreme court, to prosecute all proceedings for the removal or suspension of attorneys and counsellors-at-law or the said presiding justice may, in a county wholly included within a city or in a county having a population of over three hundred thousand inhabitants, appoint an attorney and counsellor-at-law, designated by a duly incorporated bar association approved by him, to prosecute any such proceedings and, upon the termination of the proceedings, may fix the compensation to be paid to such attorney and counsellor-at-law for the

services rendered under such designation, which compensation shall be a charge against the county specified in his certificate and shall be paid thereon."

Statement

Affirmative findings by both the Referee and the Appellate Division against petitioner, Zuckerman, were:

"5A. The respondent has deliberately refused to cooperate with the Court in its efforts to expose unethical practices, and in its efforts to determine whether he has committed any acts of professional misconduct which destroyed the character and fitness required of him as a condition to his retention of the privilege of remaining a member of the bar."

"5B. The respondent Landon Zuckerman has submitted misleading, exaggerated and false medical bills and statements covering lost time and earnings for the purpose of inducing various insurance companies to part with money in reliance thereon."

"5F. The respondent Landon Zuckerman has built up medical bills for submission to insurance companies by referring claimants to a succession of doctors, orthopedists, neurosurgeons, etc."

"5H. The respondent Landon Zuckerman has improperly and in violation of the Canons of Ethics used investigators to sign up retainers, to obtain adversary statements from parties represented by attorneys, and by having blank guardian ad litem forms signed by claimants."

As to petitioner, Haber, both the Referee and the Appellate Division made affirmative findings only as to Charges 5B, 5F and 5H.

Regarding Charge 5A

The Referee's Report, considering Charge 5A as to petitioner, Zuckerman, analyzed the proceedings before Mr. Justice Gulotta, designated by the Appellate Division to preside over the investigation (Referee's Report, pp. 2-10).

On March 14, 1961, Zuckerman appeared before the Judicial Inquiry and produced at that time some of his files and check stubs for the year 1958, at which time the files were examined, as well as the check stubs and one checkbook. Zuckerman's attention was called to two specific checks, both dated March 27, 1958, each in the sum of $570.00, one to the order of Sol Bernstein and the other to the order of Edwin Carlton.

On March 22, 1961, both Zuckerman and Haber appeared before the Judicial Inquiry with their attorney, Mr. McCann, at which time there was a discussion as to the materiality of the documents to be examined.

On March 27, 1961, Mr. McCann called respondent, stated that Zuckerman's and Haber's financial records were under the scrutiny of the Internal Revenue Service and that, therefore, he could not and would not release them to the Judicial Inquiry (S.M. pp. 38, 39).

On April 28, 1961, Zuckerman, Haber and Mr. McCann appeared before Mr. Justice Frank A. Gulotta, Justice of the Supreme Court presiding at the Additional Special Term of the Judicial Inquiry hearings (S.M. pp. 40, 41, 42), who ordered Zuckerman and Haber to turn over to respondent herein, their files, books and various records pertaining to checks issued by them which they produced pursuant to a subpoena *duces tecum*, with the admonition that (S.M. p. 59):

> "The Court: Well, I am not so inclined to believe. And, as I mentioned before, I think, in view of the testimony that has gone before, the inquiry into these books and records is proper. And, as I also stated,

I think that as members of the bar these respondents have laid open in any inquiry of this type their entire conduct during the entire period that they have been practitioners before the bar. And with that in mind, all I can do is again repeat that if, in the course of the examination, they feel that any of their Constitutional rights have been or are about to be invaded, that they raise the question at that time."

Judge Gulotta also made the following statements (Transcript of Testimony, pp. 55, 56, 57):

"Mr. McCann, as I look at the situation, we are concerned in this Inquiry with the conduct of these attorneys and the desire to seek out the truth. If the truth hurts them, they must live with it. If it helps them, we are desirous of knowing it. And in that search for truth, these respondents should be prepared and willing to lay open their files and records and be candid with the Court.

"In the testimony that has been before the Court, there is a sufficient basis, I find, for the issuance of the subpoena, and it is not a subpoena which is issued merely for the purpose of going on a so-called fishing expedition. And to arrive at a proper and complete and just conclusion in this inquiry, I find that the examination of books and records, in view of the testimony that has gone before, are both relevant and material. And unless there be a question of Constitutional privilege raised, I shall order that they be turned over to Judge Greason for examination, and wherever some item that has been ordered produced is not produced that these respondents explain the reason for the non-production.

"Of course, if, unfortunately, they are caught between two or more inquiries, and their answer to one may in some way tend to incriminate them in the other, their Constitutional privileges will be safeguarded.

"Mr. McCann: I do not want your Honor to think, nor do I want this record to reflect that the respondents are even thinking about the books being such as would incriminate them. The question is, in your opinion, if you were to check every item of their financial records, were these proper charges. You might say they were proper charges. The Internal Revenue might say they were not proper charges.

"In your report to the Appellate Division, relevant to the financial aspect of the case, you might make a report on that which, in turn, the Appellate Division might forward to the Internal Revenue Service.

"That is the type of difference.

"The Court: Of course, we are anticipating something which may or may not happen. And our function here is merely to ascertain whether these lawyers have conducted themselves in conformity with the Canons of Ethics, and whether there has been misconduct, not in unearthing evidence that might or should be turned over the Revenue Service. So that, Mr. McCann, I think that justice will be served, and I think that when these respondents became members of the bar that they have laid before the Court everything that they do, and I think that they must be required to candidly explain their conduct in the practice of the law.

"And so, I shall, as I said before, order that they produce the items mentioned in the subpoena."

Mr. McCann, at the same time stated (Transcript of Testimony, pp. 57, 58):

"Well, of course, we have produced them, Judge.

"The question in my mind, your Honor has mentioned, I won't say by way of suggestion, the question of urging the Constitutional privileges that citizens generally possess, which I do not think we, as members of the bar, possess any longer, as far as that

provision of the Fifth Amendment that has to do with incriminations.

"However, I was wondering whether or not, in view of the magnitude of the request contained in the subpoena relative to the financial record of the respondents, whether or not that would not constitute an unreasonable search by judicial process. That Constitutional question I would like to urge before your Honor, both under the Fourth Amendment of the Constitution of the United States, and under Article 1, Section 12 of the Constitution of the State of New York.

"In making that motion, asking your Honor to consider, I am indeed mindful of the fact that this proceeding is considered, and in my opinion is a lawful proceeding. And therefore there would be, in my opinion, the additional factor that being a lawful proceeding the search is reasonable. But, I say, that the factor involved is individual items over a period of three years, the relevancy of which individually—now I am talking about the items when I say individually—has not been shown in this court. And, therefore, the question comes up, in mind, as to whether or not your Honor's ruling would not be somewhat unreasonable and constitute an unreasonable search by judicial process."

And then Judge Gulotta stated (S.M. p. 60):

"They have not answered any question yet, and the privilege is still open to them, and if you choose on Constitutional grounds that they not be examined, I stated to you before you may do so. On the other hand, you say that you want to lay open all their books. And if that be so, they will have a very competent advisor sitting alongside of them in the person of yourself to advise them as to their rights. And I am sure no rights of theirs will be invaded."

On May 19, 1961, Zuckerman and Haber appeared before Mr. Justice Gulotta and were again directed to bring the records to the Judicial Inquiry on May 22, 1961.

On May 22, 1961, Zuckerman appeared alone at the Judicial Inquiry office, stating: "I am taking my privilege." When Zuckerman returned at a later hour that day with Haber and Mr. McCann, Zuckerman again invoked the privilege and refused to produce the official financial records at the Judicial Inquiry (Transcript of Testimony, pp. 74 and 75).

On May 26, 1961, before Mr. Justice Gulotta, Zuckerman testified that he had in his possession the checkbooks and cancelled checks which had been brought pursuant to the subpoena, and restated his refusal of May 22, 1961, to answer any questions or to produce the specified checkbook for the period, February 14, 1958 to May 16, 1958, on the ground,

> "I respectfully refuse to do so and raise my privileges under the Constitution of the United States and the Constitution of the State of New York, and more particularly invoke my privilege under the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, and Article 1, Section 1, 6 and 12 of the New York State Constitution."

Zuckerman invoked his Constitutional privileges on many other occasions (Transcript of Testimony, pp. 102-114).

When Zuckerman appeared before the Referee on September 20, 1962, he was asked this question (Transcript of Testimony, p. 612):

> "Q Mr. Zuckerman, with regard to your asserting the privilege, and with regard to your failure to answer certain questions which have been read into the record here, was it your purpose or intent to block or impede or in any way hinder the Judicial Inquiry from investigating into your affairs? A. No, sir, I did not

intend to impede them, but I do think there is a famous scientist says, 'Where law ends tyranny begins.' And I frankly think that they had no right to do it. And I think some attorney somewhere has got to stand up and take a stand. And six million of my countrymen died because one man would not take a stand. And I am going to take a stand."

Haber never invoked the Fifth Amendment or any other Constitutional Amendment. Instead, he made every effort to persuade Zuckerman to turn over to the Judicial Inquiry and to Mr. Justice Gulotta the records and checks and check stubs that were subpoenaed and also tried to persuade him to relinquish possession of these documents.

On May 8, Mr. McCann sent a statement to the Judicial Inquiry on behalf of Zuckerman. This statement was read into the record of the Judicial Inquiry by respondent, in the presence of Haber. In the statement, Zuckerman gave his legal reasons for refusing to turn over the financial information demanded (Ex. 5, Transcript of Testimony, p. 67).

Haber objected to Zuckerman's statement and refused to join in it and stated that he disagreed with it (Transcript of Testimony, pp. 69 and 74).

Haber advised Mr. Justice Gulotta that the checks and check stubs were not in his possession nor available to him and that Zuckerman had taken physical possession of them (Transcript of Testimony, p. 527), and that he was willing to comply with the Order of Mr. Justice Gulotta but was unable to do so. Mr. Justice Gulotta suggested to Haber that he consult the Partnership Law to ascertain ways and means of obtaining possession of these records (Transcript of Testimony, p. 529).

Haber made a research into the law and could not ascertain any remedy that he might pursue. He also conferred with counsel, who informed him that he knew of no pro-

ceeding that he could bring against Zuckerman (Transcript of Testimony, pp. 527, 528).

The Referee's findings (Referee's Report, pp. 10 and 11) were as follows:

> "I find that Mr. Haber answered every question propounded of him, without objection, and was at all times ready and willing to turn over to the Judicial Inquiry any books, records of financial data. Mr. Haber had no knowledge or information that Mr. Zuckerman would refuse to turn over the records requested by the Judicial Inquiry, and that he emphatically disagreed with Mr. Zuckerman's position of refusing to answer and turning over the records requested by the Judicial Inquiry (S.M. p. 529).
>
> "I find that Mr. Haber did nothing, in my opinion, to impede the investigation, and I recommend that the charge against him be dismissed.
>
> "Insofar as Mr. Zuckerman is concerned, I find that he did impede the investigation and his refusal to answer before the Judicial Inquiry was not in good faith.
>
> "It is, therefore, my opinion that the respondent Zuckerman's course of conduct before the Additional Special Term was contumacious and designed to obstruct the investigation. The respondent Zuckerman, as the Supreme Court held in the *Cohen* case, had a special duty as a lawyer to cooperate with the Court of Inquiry and answer questions relating to his professional conduct, and he did not in such connection have the right to invoke the Fifth Amendment.
>
> "I find that this charge against the respondent Zuckerman has been sustained."

The testimony conclusively establishes that petitioner Zuckerman's course of conduct was designed to obstruct the investigation and that he deliberately refused to cooperate with the Court.

Regarding Charges 5B and 5F

The Referee's Report exhaustively treated and considered the testimony and evidence against the petitioners on these two charges (Referee's Report, pp. 18 to 45). The Referee found the charges to be sustained as to both petitioners, Zuckerman and Haber, by a fair preponderance of the evidence and the reasonable inferences to be drawn therefrom (Referee's Report, p. 45).

Regarding Charge 5H

This specification charged the petitioners herein, Zuckerman and Haber, in violation of the Canons of Ethics, of using investigators to sign up retainers, to obtain adversary statements from parties represented by attorneys, etc.

The Bill of Particulars, in paragraph 13, pages 13 to 16, detailed the cases and the acts complained of. The testimony in the *Cox* matter showed that Rodau, the investigator, had, on May 27, 1959 (the date of the accident), taken a statement from Mary Cox, the driver of one of the cars involved in the accident, after seeing Mrs. Scott, the client of Zuckerman and Haber, at the Glen Cove Hospital. This statement was forwarded to Zuckerman and Haber (Transcript of Testimony, pp. 1320, 1321).

On May 27, 1959, the same date as Rodau's visit to the hospital, the attorney for Mary Cox, by letter, demanded of Zuckerman and Haber the surrender of the Cox statement, pointing out specifically that there was a violation of the Penal Law in taking the statement at the hospital. On May 29, 1959, the statement was returned, by letter, to counsel with a request that it be returned to them "if you ever settle your case" (Ex. 101; Transcript of Testimony, p. 1336).

Unsigned statements of Schlosser and Martin (Transcript of Testimony, pp. 1356 and 1359) were received from Rodau by Zuckerman and Haber.

Statements of adversary parties—

Ciambrone (Transcript, p. 1364); Pepper (Transcript, p. 1365); and Cimonetti (Transcript, p. 1367)

were received by Zuckerman and Haber from Rodau, although the persons named were represented by attorneys.

Although the Referee's Report, at page 52, notes "that Zuckerman and Haber have improperly and in violation of the Canons of Ethics, * * *" the Referee adverts to Special Rule 7 of the Appellate Division, Second Department (Referee's Report, pp. 53, 54).

The Appellate Division, in its Opinion on the Order of Disbarment and Suspension (Appendix 6a), specifically found that Specification 5H was amply sustained by the proof. Despite the Referee's misnomer as to Specification 5H, the charge against Zuckerman and Haber and the finding of the Appellate Division was a violation of Canon 9, Canons of Professional Ethics.

Incidentally, it is necessary to comment that the Appellate Division, Second Department, found it necessary to promulgate Rule 7, effective July 1, 1960, because of the disregard shown by attorneys for the prohibition contained in Canon 9 of the Canons of Professional Ethics (which had been in effect since 1909, as amended to April 1, 1948).

Rule 7 is merely a repetition and amplification of Canon 9, as appears from a reading of the Canon and the Rule.

ARGUMENT

POINT I.

Petitioners claim, under "Question 1" and "Reasons for Allowance of the Writ—1." that the Appellate Division, Second Department is the investigator, the prosecutor, and then passes on the guilt or innocence of the attorneys.

As in the Brooklyn "ambulance chasing" Judicial Inquiry, referred to by this Court in *Anonymous* v. *Baker*, 360 U. S. 287, the Judicial Inquiry in Nassau County was instituted in 1959 by the Appellate Division, Second Department on the Application of the Bar Association of Nassau County, and respondent herein was nominated by the Bar Association of Nassau County and appointed by the Appellate Division as Chief Counsel. This Order directed that a judicial inquiry and investigation be made, pursuant to New York State Constitution, Article VI, Section 2; Judiciary Law, Sections 90, 86, as to:

1. The alleged improper practices by attorneys and counsellors at law in Nassau County;
2. The alleged corrupt and unethical practices by attorneys and counsellors at law in Nassau County, in the solicitation of retainers, in the subsequent prosecution and disposition of claims and actions, and in any other matters;
3. Any and all other practices by attorneys and counsellors at law in Nassau County, involving professional misconduct, fraud, deceit, corruption and crime; and
4. Any and all conduct by attorneys and counsellors at law in Nassau County, prejudicial to the administration of justice.

The petitioners, pursuant to the Special Rule Regulating the Conduct of Attorneys and Counsellors at Law, had filed contingent retainers in personal injury cases as follows:

1956	212
1957	270
1958	225
1959	178

This led to the investigation of petitioners.

This Court, in *Anonymous* v. *Baker*, 306 U. S. 287, reviewed the nature of the proceedings as to discipline and removal of members of the Bar, placed by law in the Appellate Division of the Supreme Court (Sec. 90, Judiciary Law) and refused to find unconstitutional the procedures followed in such an inquiry.

There is no failure to meet constitutional standards of due process.

POINT II

Petitioners claim, under "Question 4," "Question 5" and "Reasons for Allowance of the Writ—2." that the application of Special Rule 7 by the Referee to Charge 5H was the application of an *"ex post facto"* law and constituted a violation of the constitutional rights of petitioners.

Charge 5H charged petitioners with a violation of the Canons of Ethics.

The proof before the Referee substantiated the charge (Transcript of Testimony, pp. 1320, 1321; 1355, 1359, 1364, 1365, 1366).

The Appellate Division in its Opinion on Order of Disbarment and Suspension, referring to Charge 5H, stated:

> "• • • that both respondents, improperly and in violation of the Canons of Ethics, used investigators to

obtain signed retainers, to obtain adversaries' statements from parties represented by attorneys * * *."

The Appellate Division had the Record as well as the Referee's Report before it and found that Charge 5H was amply sustained by the proof.

It is apparent that no attention was paid to the Referee's injection of Special Rule 7 into the proceeding.

POINT III

Regarding "Question 3," "Question 4" and "Reasons for Allowance of the Writ—3.", petitioner Zuckerman claims that his constitutional rights were violated when he was directed to permit examination of his files, checkbooks and checks.

Zuckerman had permitted the examination of a few files and a book of check stubs, but finally refused further examination and asserted his Constitutional privileges.

Petitioner Zuckerman makes much of the alleged confusion as to whether examination was sought or a turn over was required.

It is conclusively shows that an examination of the books and records was required.

There never was full disclosure by petitioner, Zuckerman, as the proof amply shows, and his action was disagreed with by Haber. (Transcript of Testimony, p. 529.) (Referee's Report, p. 10.)

See:

Cohen v. *Hurley*, 366 U. S. 117, 81 S. C. 954.

POINT IV

Regarding "Question 6" and "Reasons for Allowance of the Writ—4."

The Referee and the Appellate Division had the Record and the proof before them. The Referee found both petitioners guilty of Charges 5B, 5F and 5H, and absolved Haber of Charge 5A. The Appellate Division, after long and careful consideration of the Record and the Referee's Report, saw fit to follow the Referee's recommendations based on the proof.

The Appellate Division could confirm or disaffirm any finding of the Referee, and its ultimate decision is based on the proof alone.

CONCLUSION

The Petition for the granting of a Writ of Certiorari should be denied.

Respectfully submitted,

SAMUEL GREASON,
Respondent *Pro Se*,
Chief Counsel, Judicial Inquiry
on Professional Conduct.

WILLIAM F. HANRAHAN,
Assistant Counsel.

APPENDIX

Order of Disbarment of Respondent Landon Zuckerman, and Order of Suspension of Respondent Sam Haber.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 3rd day of March, 1965

Present—Hon. MARCUS G. CHRIST, Acting Presiding Justice
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS, Justices.

[SAME TITLE]

Proceedings having been instituted by Samuel Greason, Esq., by petitions verified the 12th day of July, 1961, in respect to Landon Zuckerman, an attorney and counselor at law admitted by the Appellate Division of the Supreme Court, Second Judicial Department, on December 14, 1949, under the name of Landon R. Zuckerman; and in respect to Sam Haber, an attorney and counselor at law admitted by the Appellate Division of the Supreme Court, Second Judicial Department, on December 15, 1953, petitioning for orders directing that said respondents Landon Zuckerman and Sam Haber, as attorneys and counselors at law, be disciplined upon the charges set forth in said petitions and why such other and further action upon the charges embodied in said petitions, as justice may require, should not be had and for such other and further relief in the premises as may be just and proper, and the respond-

Order of Disbarment of Respondent Landon Zuckerman, and Order of Suspension of Respondent Sam Haber

ents having filed verified answers, and this court by orders dated and entered September 25, 1961, having referred the issues raised by the petitions and answers to George C. Wildermuth, Esq., as Referee, for hearings and reports, together with his recommendations, and the said Referee having held hearings and filed his report dated June 6, 1964 in this court on July 27, 1964, and the petitioner having moved by notice of motion, dated September 9, 1964 (1) to confirm the Referee's report with respect to the Referee's findings as to charges 5-A, 5-B, 5-D, 5-F and 5-H; and (2) to disaffirm the report only insofar as the Referee found three of the charges (5-C, 5-E and 5-I) not to be sustained, and insofar as he recommends their dismissal; and the respondents having each cross moved, by notices of cross motions dated September 14, 1964 and September 15, 1964 to affirm in part and to disaffirm in part the Referee's findings, and to dismiss the petitions.

Now on reading and filing the notice of motion of petitioner, the memorandum of petitioner, the petitions, answers, the report of George C. Wildermuth, Esq., the testimony and exhibits, notices of cross motions and memoranda of respondents, and all the papers filed herein, and Mr. Samuel Greason, petitioner, appearing in person, and Mr. Leonard Feldman appearing for respondent Landon Zuckerman, and Messrs. Caputo and Levine appearing for respondent Sam Haber, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, dated March 3, 1965, heretofore filed, and made a part hereof: it is

Order of Disbarment of Respondent Landon Zuckerman, and Order of Suspension of Respondent Sam Haber

Ordered, that part of petitioner's motion to affirm the Referee's findings as to the four charges: 5-A, 5-B, 5-F and 5-H, be and the same hereby is granted; and that part of the petitioner's motion to disaffirm the Referee's findings as to charges 5-C, 5-E and 5-I, be and the same is denied; and it is further

Ordered that respondent Landon Zuckerman, admitted as Landon R. Zuckerman, is found guilty of charges 5-A, 5-B, 5-F and 5-H; and, based upon such guilt, the said respondent be and he hereby is disbarred from practice as an attorney and counselor-at-law in the State of New York, effective thirty days after entry of this order; and it is further

Ordered that the name of the said Landon Zuckerman, admitted as Landon R. Zuckerman, be struck from the roll of attorneys and counselors-at-law in the State of New York, effective thirty days after entry of this order; and it is further

Ordered, pursuant to the provisions of the Judiciary Law of the State of New York, that the said Landon Zuckerman, admitted as Landon R. Zuckerman, is hereby directed to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another, and he is forbidden to appear as an attorney and counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law, or its application, or any advice in relation thereto; and it is further

Order of Disbarment of Respondent Landon Zuckerman, and Order of Suspension of Respondent Sam Haber

Ordered that the respondent Sam Haber, be and he hereby is found guilty of charges 5-B, 5-F and 5-H, and, based upon such guilt, it is further

Ordered that the respondent Sam Haber, be and he hereby is suspended from the practice of law for a period of five years, commencing thirty days after entry of this order; and it is further

Ordered, pursuant to the provisions of the Judiciary Law of the State of New York, that the said Sam Haber is hereby directed to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another, and he is forbidden to appear as an attorney and counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law, or its application, or any advice in relation thereto; and it is further

Ordered that the suspension of said Sam Haber hereby ordered shall continue until the further order or orders of this court permitting the said Sam Haber to resume the practice of the law which may be granted upon proof that the said Sam Haber has not practiced law as hereinabove set forth in the State of New York during the period of suspension, and has been of good moral character, proof of such good character on the part of Sam Haber, to be of the same nature and form as is required of applicants for admission to the Bar; and it is further

Ordered that the respondents' cross motions insofar as they seek a dismissal of the petition be and the same are

Order of Disbarment of Respondent Landon Zuckerman, and Order of Suspension of Respondent Sam Haber

denied; and respondents' cross motions insofar as they seek to affirm in part and to disaffirm in part the Referee's findings be and the same hereby are dismissed as unnecessary in view of the disposition made upon the petitioner's motion.

Enter:

JOHN J. CALLAHAN
Clerk

Opinion on Order of Disbarment and Suspension.

(Filed March 3, 1965; published, N.Y.L.J. March 4, 1965)

By Christ, Acting P.J.; Brennan, Hill, Rabin and Hopkins, JJ.

Matter of Landon Zuckerman and Sam Haber, attorneys —This is a proceeding to discipline respondents, attorneys, based on nine charges or specifications of professional misconduct (Nos. 5-A to 5-I) arising out of the recent Judicial Inquiry into Unethical Practices of Attorneys in Nassau County. The special referee to whom the issues were referred has held extensive hearings and has filed his report. The referee found that one of the charges (5-A) was sustained in so far as the respondent Zuckerman was concerned, but recommended its dismissal as to the respondent Haber. As to both respondents, the referee found that three of the other charges (5-B, 5-F and 5-H) were sustained by the proof. The referee recommended dismissal of the remaining five charges (5-C, 5-D, 5-E, 5-G and 5-I). He recommended the respondent Zuckerman's disbarment on charges 5-A, 5-B, 5-F and 5-H, and the suspension of the respondent Haber from the practice of law for a period of two years with respect to charges 5-B, 5-F and 5-H. Petitioner now moves: (1) to conform the referee's report with respect to the referee's findings as to charges 5-A, 5-B, 5-D, 5-F and 5-H; and (2) to disaffirm the report only in so far as the referee found three of the charges (5-C, 5-E and 5-I) not to be sustained, and in so far as he recommended their dismissal. Apparently, petitioner is content to rest on the referee's recommendation of dismissal of charge 5-A in so far as the respondent Haber is concerned, and on the

referee's recommendation of dismissal of charges 5-D and 5-G. The respondents have each made a cross-motion to affirm in part and to disaffirm in part the referee's findings, and to dismiss the petition. The charges which the referee sustained are: (1) that respondent Zuckerman deliberately refused to co-operate with the court in its efforts to expose unethical practices and to determine whether he had committed any acts of professional misconduct which destroyed the character and fitness required of him as a condition to his retention of the privilege of remaining a member of the Bar [5-A]; (2) that both respondents submitted misleading, exaggerated and false medical bills and statements covering lost time and earnings for the purpose of inducing various insurance companies to part with money in reliance thereon [5-B]; (3) that both respondents have "built up medical bills, for submission to Insurance companies by referring claimants to a succession of doctors," etc. [5-F]; (4) that both respondents, improperly and in violation of the Canons of Ethics, used investigators to obtain signed retainers, to obtain adversaries' statements from parties represented by attorneys, and to obtain the claimants' signatures on blank forms for the appointment of guardians ad litem [5-H]. In our opinion, charge or specification 5-A is amply sustained by the proof in so far as respondent Zuckerman is concerned. We are also of the opinion that as to both respondents the three charges or specifications 5-B, 5-F and 5-H are amply sustained by the proof. We approve the referee's findings that charges 5-C, 5-D, 5-E 5-G and 5-I have not been sustained by the proof. Charge 5-C is that respondents made gifts of United States Government bonds and cash to referrers of cases; charge 5-D

is that the respondents made payments to others than attorneys in effecting the settlement of negligence cases; charge 5-E is that respondents failed fully and properly to name referrers in statements of retainer; charge 5-G is that the respondents settled infants' claims without court orders; and charge 5-I is that the respondents stirred up litigation by having insurance brokers, doctors, automobile repairmen, police officers, bond recipients and others solicit and refer claims to the respondents' law firm of Zuckerman and Haber. Accordingly, that part of petitioner's motion to affirm the referee's findings as to the four charges: 5-A, 5-B, 5-F and 5-H is granted; and that part of the petitioner's motion to disaffirm the referee's findings as to charges 5-C, 5-E and 5-I is denied. The respondent Zuckerman is found guilty of charges 5-A, 5-B, 5-F and 5-H; and, based upon such guilt, the said respondent is disbarred and his name directed to be struck from the roll of attorneys, effective thirty days after entry of the order hereon. The respondent Haber is found guilty of charges 5-B, 5-F and 5-H, and, based upon such guilt, he is suspended from the practice of law for a period of five years, commencing thirty days after entry of the order hereon. The respondents' cross-motions in so far as they seek a dismissal of the petition are denied; and respondents' cross-motions in so far as they seek to affirm in part and to disaffirm in part the referee's findings are dismissed as unnecessary in view of the disposition made upon the petitioner's motion.

Notice of Appeal.

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the respondent Landon Zuckerman hereby appeals to the Court of Appeals as of right from an order of disbarment dated on the 3rd day of March 1, 1965, entered in the Office of the Clerk of the Appellate Division, Second Department, on the 11th day of March, in that said order is violative of the 14th Amendment to and Article 1 section 10, of the Constitution of the United States and Article 1 section 8, of the Constitution of the State of New York, and does hereby appeal from each and every part of said order.

Yours, etc.,

LEONARD FELDMAN
Attorney for Respondent
Office & P. O. Address
350—5th Ave.,
New York, N. Y. 10001

To:

SAMUEL GREASON, Esq.,
Chief Counsel
Judicial Inquiry on Professional Conduct,
821 Franklin Avenue,
Garden City, New York

Clerk of Appellate Division
Second Department

Order on Motion for Reargument or for Leave to Appeal to the Court of Appeals.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 15th day of April, 1965

Present—Hon. MARCUS G. CHRIST, Acting Presiding Justice
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS, Justices.

[SAME TITLE]

The above named Landon Zuckerman, having been disbarred from the practice of law, by order of this court, dated March 3, 1965 and entered March 11, 1965 such disbarment commencing thirty days after entry of said order, and the respondent having moved for reargument or for leave to appeal to the Court of Appeals, by notice of motion, dated March 29, 1965.

Now on reading and filing the affidavit of Leonard Feldman in support of said motion and the affidavit of Samuel Greason in opposition thereto and the said motion having been submitted by Mr. Leonard Feldman of Counsel for respondent and submitted by Mr. Samuel Greason, petitioner, appearing in person, and due deliberation having been had thereon:

It is Ordered that the motion for reargument or for leave to appeal to the Court of Appeals be and the same hereby is denied.

Enter:

JOHN J. CALLAHAN
Clerk

Order on Motion for Reargument or for Leave to Appeal to the Court of Appeals and for a Stay.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 15th day of April, 1965.

Present—Hon. MARCUS G. CHRIST, Acting Presiding Justice
" ARTHUR D. BRENNAN,
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS, Justices.

[SAME TITLE]

The above named Sam Haber, having been suspended from the practice of law for a period of five years, by order of this court, dated March 3, 1965 and entered March 11, 1965, such suspension commencing thirty days after entry of said order, and the respondent having moved for reargument or for leave to appeal to the Court of Appeals and for a stay, by notice of motion, dated March 29, 1965.

Now on reading and filing the statement of Michael Caputo in support of said motion and the affidavit of Samuel Greason in opposition thereto; and the said motion having been submitted by Mr. Michael Caputo of Counsel for respondent and submitted by Mr. Samuel Greason, petitioner, appearing in person, and due deliberation having been had thereon:

It is Ordered that the motion for reargument or for leave to appeal to the Court of Appeals and for a stay be and the same hereby is denied.

Enter:

JOHN J. CALLAHAN
Clerk

Notice of Appeal.

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the respondent Landon Zuckerman, hereby appeals to the Court of Appeals as of right from an order of disbarment dated the 3rd day of March, 1965, entered in the Office of the Clerk of the Appellate Division, Second Department, on the 11th day of March, 1965, in that said order is violative of the 14th Amendment to and Article 1, section 10, of the Constitution of the United States and Article 1, section 6, of the Constitution of the State of New York, and does hereby appeal from each and every part of said order.

Dated: New York, N. Y.

April 28, 1965

Yours, etc.,

LEONARD FELDMAN,
Attorney for Respondent,
Office & P. O. Address:
350—5th Avenue,
New York 1, N. Y.

To:

SAMUEL GREASON, Esq.,
Chief Counsel
Judicial Inquiry on Professional Conduct,
821 Franklin Avenue,
Garden City, New York

Clerk of Appellate Division
Second Department

Notice of Appeal.

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION—SECOND DEPARTMENT

[SAME TITLE]

SIR:

PLEASE TAKE NOTICE, that the respondent Sam Haber hereby appeals to the Court of Appeals from each and every part of the order made March 3, 1965, by the Appellate Division, Second Department and entered March 11, 1965, suspending respondent Sam Haber from the practice of law for five years and from the whole thereof.

Dated: March 29, 1965.

MICHAEL CAPUTO
Attorney for Sam Haber
16 Court Street
Brooklyn 1, New York

To:

SAMUEL GREASON, Esq.
Petitioner
821 Franklin Avenue
Garden City 1, New York

Order Dismissing Appeal of Petitioner Sam Haber.

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-first day of October A. D. 1965.

Present—Hon. CHARLES S. DESMOND, Chief Judge, presiding.

Mo. No. 816

In the Matter of

SAM HABER, An Attorney.

SAMUEL GREASON,

Respondent,

SAM HABER,

Appellant.

A motion having heretofore been made upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed upon the ground that no substantial constitutional question is presented.

[SEAL]

A copy

GEARON KIMBALL
Deputy Clerk

Order Dismissing Appeal of Petitioner Landon Zuckerman.

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-first day of October A. D. 1965.

Present—Hon. CHARLES S. DESMOND, Chief Judge, presiding.

[SAME TITLE]

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court, papers having been submitted in support of and in opposition to said motion, and after having heard Leonard Feldman, Esq., argue orally in opposition thereto, and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed upon the ground that no substantial constitutional question is presented.

A copy

GEABON KIMBALL
Deputy Clerk